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March 31, 2009

Richard C. Carl, Director  
Superfund Division  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

Thomas Turner  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

**Re: Invoice dated March 11, 2009 ("Invoice") for Oversight Costs Incurred for the Period of March 2, 2008 to October 27, 2008 ("Oversight Costs") for the RRG/Clayton Chemical Co. Superfund Site, 1 Mobil Avenue, Sauget, Illinois (the "Clayton Chemical Site" or the "Site"), Pursuant to Unilateral Administrative Order No. VW-08-C-89 dated March 5, 2008 ("Order").**

Dear Sirs:

The undersigned Responding Parties are writing to object to EPA's unfair and unwarranted decision to single them out for payment of EPA oversight charges that are attributable to all of the Respondents named in the Order, Section IV.4. EPA issued the Order in this case to eleven Respondents. Despite the fact that they had meritorious factual and legal defenses, four of those Respondents (the Responding Parties) promptly and expeditiously stepped forward to comply with the Order and to coordinate a construction project that has progressed smoothly and efficiently in the field. Unfortunately, the other seven Respondents have ignored the Order.

The Responding Parties recently received EPA's oversight cost bill, but the seven recalcitrant Respondents apparently did not. Pursuant to Section VII of the Order, all eleven entities named in the Order, not just the Responding Parties, are required to "reimburse U.S. EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Order." EPA's decision to send the invoice to only four of the eleven Respondents is inconsistent with the terms of the Order.



EPA's decision to single out four of the eleven Administrative Order recipients has created an additional reason why this aspect of the Order is unenforceable. We believe that the oversight cost reimbursement provision in the Order already was unenforceable and beyond the scope of EPA's authority under Section 106 of CERCLA, because replenishment of the Superfund is not among the types of imminent and substantial endangerments to human health or the environment that Section 106 covers. When coupled with EPA's decision to send the oversight cost billing to less than all Respondents named in the Order, this aspect of the Order is not acceptable to the Responding Parties.

The problem that EPA's approach creates for the Responding Parties is that the seven recalcitrant Respondents now will have an argument that they do not owe the oversight costs, because they did not get the bill from EPA. This obviously impacts our ability to seek the recovery of those response costs pursuant to CERCLA §§ 113 and/or 107. As you know, Section 107 permits a private party to seek recovery of response costs incurred that are attributable to other parties, and Section 113 permits a private party to sue others in a contribution action for their fair share of liability. EPA's assignment of the Oversight Costs to only the four Responding Parties would defeat the ability to maintain that these costs are attributable to all of the Respondents named in the Order. That is a significant problem for us, but it is easy for EPA to fix. We believe that EPA either is required by law to do so, or to forego its oversight cost claim altogether.

EPA's unfair enforcement approach in this case makes for poor public policy. Unpredictable and unfair enforcement decisions discourage voluntary cooperation at Superfund sites. EPA's approach at the Clayton Chemical Site punishes Responding Parties, while recalcitrant parties would appear to be absolved of their responsibilities to respond to the Order. Seven companies have completely refused to even acknowledge, let alone comply with, EPA's Order, and EPA's decision to reward them by refusing to send the oversight bill to them is an unwarranted erosion of the public policy supporting the Superfund program.

We respectfully request that U.S. EPA reissue the Invoice demanding payment to all eleven (11) parties named in the Order, regardless of who ultimately pays the Oversight Costs. We look forward to cooperating with the U.S. EPA in the effort to address the Clayton Chemical Site. However, in order to preserve our legal rights, the Responding Parties are not in a position to pay the Invoice as submitted.

Richard C. Carl, Director  
Thomas Turner  
March 31, 2009  
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We look forward to your response. Please contact the undersigned Responding Parties if you have any questions.

Very truly yours,

Ameren CIPS

By: Joe Mader

Schering Plough

By: Trish Foley by JFM

Sigma Chemical Co.

By: Tanya O'Neill by JFM